

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:07-CR-68
	)	(JORDAN/SHIRLEY)
PHILLIP LYNN SHEETS,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. In a Memorandum and Order [Doc. 37] entered by this Court on October 15, 2008, the Court ordered the Federal Medical Center at Butner, North Carolina (“FMC”) to evaluate whether the Defendant’s release would create a substantial risk of bodily injury to another person or serious damage to property of another under 18 U.S.C. § 4246(b). The Defendant’s evaluation period at the FMC ended on December 28, 2008.

The Court and the parties have received a forensic evaluation (“the forensic evaluation”) dated January 23, 2009, from Jill R. Grant, Psy. D., and Bruce R. Berger, M.D., at the FMC. The forensic evaluation finds that the Defendant does not meet the criteria for commitment pursuant to 18 U.S.C. 4246 because his release would not create a substantial risk of bodily injury to another person or serious damage to the property of another, and in light of the Defendant’s agreeing to take medication to address his mental impairments, the forensic evaluation finds that the Defendant has been restored to competency, as he is now able to understand the roles of this Court,

Attorney Moffatt, and the Government in this proceeding and the meaning of plea bargains and other possible dispositions.

The Defendant returned to this district on February 3, 2009. Upon the Defendant's return, the Court held an expedited hearing on February 5, 2009, to address the Defendant's competency and scheduling matters. Assistant United States Attorney Edgar Schmutzer was present representing the Government. Attorney Jonathan Moffatt was present representing the Defendant, who was also present.

At the hearing, Attorney Moffatt acknowledged receipt of the forensic evaluation and agreed that the forensic evaluation found the Defendant to be competent. The Government concurred that, based upon the contents of the forensic evaluation, the Defendant was now competent to proceed in this matter. After hearing the positions of the parties, the Court asked the Defendant a series of questions to evaluate his ability to understand the proceedings. The Defendant stated that he was currently taken his medication, Zyprexa, and confirmed that he understood he was being charged with the crime of assault. The Defendant understood the role of Attorney Moffatt and that this matter was currently proceeding toward trial. The Defendant answered each of the Court's questions appropriately and in a manner which indicated to the Court that he was competent to proceed in this matter.

Based upon the positions of the parties, the forensic evaluation, and the presentation of the Defendant at the hearing, the Court finds, pursuant to 18 U.S.C. § 4241(a) and by a preponderance of the evidence, that Defendant Phillips Lynn Sheets is able to understand the nature and consequence of the charges and proceedings against him and to properly assist an attorney in his own defense. Accordingly, the Court finds that the Defendant is **COMPETENT** to proceed.

The Indictment [Doc. 8] in this matter was filed on June 20, 2007, but because of concerns about the Defendant's mental health and capacity at prior hearings, the Defendant had not yet been arraigned on the charges contained in the Indictment. In light of the competency determination, the Court arraigned the Defendant. The Government advised the Defendant of the range of penalties for the offense charged, and the Defendant entered a plea of not guilty.

The Defendant and Government requested a hearing before the Honorable Leon Jordan, United States District Judge, which was scheduled.

In summary,

1. The Court finds that the Defendant is **COMPETENT** to proceed;
2. The Defendant has been arraigned on the charges contained in the Indictment [Doc. 8]; and
3. A hearing before the Honorable Leon Jordan, United States District Judge, has been scheduled.

**IT IS SO ORDERED.**

ENTER:

s/ C. Clifford Shirley, Jr.  
United States Magistrate Judge